

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MARCUS D. WHITE,	:	
Petitioner,	:	Case No. 3:22-cv-237
v.	:	JUDGE WALTER H. RICE
STATE OF OHIO,	:	
RESPONDENT.	:	

DECISION AND ENTRY ADOPTING UNITED STATES MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATIONS (DOC. #2);
DISMISSING PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2254 WITHOUT PREJUDICE; DENYING
CERTIFICATE OF APPEALABILITY AND LEAVE TO APPEAL *IN*
FORMA PAUPERIS; JUDGMENT TO ENTER IN FAVOR OF
RESPONDENT AND AGAINST PETITIONER; TERMINATION ENTRY

On September 6, 2022, United States Magistrate Judge Peter Silvain, Jr., issued a Report and Recommendations, Doc. #2. Therein, he found that the captioned case was duplicative of Case No. 2:22-cv-2804, currently pending in the Eastern Division of the United States District Court for the Southern District of Ohio, and recommended that it be dismissed without prejudice to Petitioner's continued prosecution of the earlier-filed case. He also recommended that the Court deny a certificate of appealability and leave to appeal *in forma pauperis*.

Although the parties were notified of their right to file Objections to the Report and Recommendations, and of the consequences of failing to do so, no Objections were filed within the time allotted.

Based on the reasoning and citations of authority set forth in the Report and Recommendations, Doc. #2, as well as upon a thorough *de novo* review of the Court's file and the applicable case law, the Court ADOPTS said judicial filing in its entirety, and DISMISSES the Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 WITHOUT PREJUDICE to Petitioner's continued prosecution of his claims in the context of Case No. 2:22-cv-2804.

Given that Petitioner has not made a substantial showing of the denial of a constitutional right and, further, that the Court's decision herein would not be debatable among reasonable jurists, and because any appeal from this Court's decision would be *objectively* frivolous, Petitioner is denied a certificate of appealability, and is denied leave to appeal *in forma pauperis*.

Judgment will be entered in favor of Respondent and against Petitioner.

The captioned case is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

Date: September 28, 2022



WALTER H. RICE
UNITED STATES DISTRICT JUDGE